

REMARKS

The present Amendment is submitted herewith with a request for continued examination (RCE) and the fee for the RCE.

As may be appreciated from the above listing of claims, the claims have been amended herein. The amendment did not add any additional claims, but did rewrite previously presented claim 60 into independent form. There are only 3 independent claims in the current application and the previously paid examination fee covered the examination of 3 independent claims. Therefore, no other fee is believed to be necessary for consideration of the present amendment. Nevertheless, authorization is also provided herewith to pay any underpayment of fees or credit any overpayment of fees to Deposit Account No. 02-4800.

I. CLAIM 68 COMPLIES WITH 35 U.S.C. § 112

In the Office Action dated December 8, 2009, the Examiner rejected claim 68 as not being supported by the specification. To the contrary, paragraph 13 of the specification supports the limitations of claim 68, which state that "at least one parameter dependent upon a selected video application." For example, paragraph 13 of the specification states "it is also possible to take into account parameters which are dependent on the user application. For example, *in the case of a video application, the parameters may be set in order to guarantee a high data transmission rate* that is free from delay." (emphasis added).

The specification explicitly supports the limitations of claim 68. It is respectfully requested that the rejection of claim 68 under 35 U.S.C. § 112 should be withdrawn.

II. CLAIM 68 IS NOT INDEFINITE

The Examiner objected to claim 68 for being unclear how a first network may also be a second network. Claim 68 has been amended to remove the objected to language, which overcomes the objection to claim 68.

III. THE PENDING CLAIMS ARE ALLOWABLE OVER THE CITED ART

The Examiner rejected all the claims in view of U.S. Patent No. 6,965,948 to Eneborg et al., U.S. Patent No. 6,356,541 to Muller et al., or U.S. Patent No. 5,826,188 to Tayloe et al. in the Office Action dated December 8, 2009 (hereafter "the Office Action").

Claims 56, 57, 60-70 and 73-76 were rejected as being anticipated by Eneborg et al. (Office Action, at 3-7).

Claims 58, 59 and 77 were rejected as obvious in view of the combination of Eneborg et al. and Muller et al. (Office Action, at 8).

Claim 71-72 were rejected as obvious in view of the combination of Tayloe et al. and Eneborg et al.

A. Burden of Proving Anticipation Under 35 U.S.C. § 102

"In order to demonstrate anticipation, the proponent must show that the four corners of a single, prior art document describe every element of the claimed invention." *Net Moneyin, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 88 U.S.P.Q.2d 1751, 1758, 2008 WL 4614511, *8 (Fed. Cir. 2008). The prior art reference relied upon to show anticipation "must not only disclose all elements of the claim within the four corners of the document, but also disclose those elements arranged as in the claim." *Id.* "As arranged in the claim means that a reference that discloses all of the claimed ingredients, but not in the order claimed, would not anticipate because the

reference would be missing any disclosure of the limitations of the claimed invention arranged as in the claim." *Id.* "The test is thus more accurately understood to mean arranged or combined in the same way as in the claim." *Id.*

B. Burden Of Proving Obviousness Under 35 U.S.C. § 103

"All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 (emphasis added). "When evaluating claims for obviousness under 35 U.S.C. 103, **all the limitations of the claims must be considered and given weight.**" MPEP § 2143.03. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *Id.* "A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date." MPEP § 2141.01.

To establish a *prima facie* case of obviousness, an Examiner must show that an invention would have been obvious to a person of ordinary skill in the art at the time of the invention. MPEP § 2141. "Obviousness is a question of law based on underlying factual inquiries." *Id.* The factual inquiries enunciated by the Court include "ascertaining the differences between the claimed invention and the prior art" and "resolving the level of ordinary skill in the pertinent art." MPEP § 2141.

"A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." MPEP § 2143.01. "[R]ejections on

obviousness cannot be sustained by mere conclusory statements; instead, **there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.**" MPEP § 2143.01 (citing *KSR*, 82 U.S.P.Q.2d at 1396) (emphasis added).

For instance, an invention that permits the omission of necessary features and a retention of their function is an indicia of nonobviousness. *In re Edge*, 359 F.2d 896, 149 U.S.P.Q. 556 (CCPA 1966); MPEP 2144.04. A conclusory statement to the contrary is insufficient to rebut such an indicia of nonobviousness. *See* MPEP § 2143.01.

Moreover, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." MPEP § 2143.01. Also, "the proposed modification cannot render the prior art unsatisfactory for its intended purpose." MPEP § 2143.01.

C. The Pending Claims Are Allowable

1. Claims 56-59 And 62-72 Are Allowable

Claims 56-59 and 62-72 define a method that includes the steps of a telecommunication terminal device connecting to the first network, determining a location of the telecommunication terminal device with the aid of the first network; and recording and saving quality of service information for the first network. The telecommunication terminal device also saves location data comprised of information relating to the determined location. The terminal device also analyzes the saved quality of service information and saved location data for the first network to select access to the first network or a second network of at least one second network for connecting to the first network or the second network of the at least one second network.

The cited art does not teach or suggest such limitations. For example, Eneborg et al. do not teach or suggest any determination of any location or saving of any location information. Nor does Eneborg et al. teach or suggest the analyzing of such data for use in select access to any networks to connect to those networks.

The Examiner states that "other factors" mentioned by Eneborg et al. include location of a terminal device. (Office Action, at 8). To the contrary, Eneborg et al. do not provide such a disclosure. The Examiner has also failed to provide any rationale as to why the location of a terminal device may be "information about the access network terminating device." (Col. 8, line 27).

Indeed, Eneborg et al. do not teach or suggest the determination or use of any location data. Eneborg et al. teach that access capabilities may be assessed for different network access mechanisms. The factors for access identified by Eneborg et al. include quality of service, bandwidth available, delay, and priority levels. (Eneborg et al., at Col. 8, lines 24-35) Eneborg et al. teach that these factors and the "other factors" relate to information **"associated with the access network terminating device,"** not the location of the telecommunications terminal or information about the telecommunications terminal. (Eneborg, et al. Col. 8, line 34) (emphasis added). Eneborg et al. clearly do not teach or suggest any location information relating to any terminal device being exchanged or being used to assess which network a device should access.

Taylor et al. and Muller et al. also fail to teach or suggest a telecommunication terminal device saving network quality of service information and location data for use in subsequent selections of networks to access. The Examiner cited Muller et al. at Col. 8, line 66 through Col. 9, line 5 as teaching a terminal device determining its location. (Office Action, at 8). However,

this portion of Muller et al. teaches the determination of "**the location of the corresponding central computer**" based on that computer's IP address or other address. The location of the terminal device is not taught or suggested by Muller et al.

The Examiner also cited Column 4, lines 1-35 of Tayloe et al. as teaching location requirements for a telecommunication device. To the contrary, Tayloe et al. is directed to inter-network hand-offs. (Tayloe et al., Col. 3, lines 55-57). Tayloe et al. teach a network configured to determine a location of a subscriber unit. (Abstract). Column 4, lines 1-35 of Tayloe et al. teach that different networks exchange network maps for determining the location of a subscriber unit. There is no teaching or suggestion of the terminal device determining its location or using its location for analyzing any network access options.

None of the cited art, alone or in any combination, teaches or suggests all the limitations of claims 56-72. The Claims 56-72 are allowable over the cited art.

2. Claims 73-77 Are Allowable

Claim 73 requires a telecommunication terminal device to be configured to determine a location the telecommunication terminal device is in when connected to a network and link that location with saved quality of network connection information such that a connection analysis module can access and evaluate the location information when analyzing network connection information.. Claims 74-77 depend directly or indirectly from claim 73 and therefore also contain these limitations.

As discussed above with reference to claims 56-72, none of the cited art teaches or suggests any terminal device configured to assess saved location data when analyzing network connection information or determining which network to access.

For instance, Eneborg et al. teach that access capabilities may be assessed for different network access mechanisms. The factors for access identified by Eneborg et al. include quality of service, bandwidth available, delay, and priority levels. (Eneborg et al., at Col. 8, lines 24-35) Indeed, Eneborg et al. teach that the "other factors" relate to information "**associated with the access network terminating device**", not the location of the telecommunications terminal or information about the telecommunications terminal. (Eneborg, et al. Col. 8, line 34) (emphasis added). Eneborg et al. clearly do not teach or suggest any location information relating to any terminal device being exchanged or being used to assess which network a device should access.

Tayloe et al. and Muller et al. also fail to teach or suggest a telecommunication terminal device saving network quality of service information and location data for use in subsequent selections of networks to access. Muller et al. teach the determination of "**the location of the corresponding central computer.**" (Muller et al., Col. 9, lines 3-4). The location of the terminal device is not taught or suggested by Muller et al.

The Examiner also cited Column 4, lines 1-35 of Tayloe et al. as teaching location requirements for a telecommunication device. To the contrary, Tayloe et al. is directed to inter-network hand-offs. (Tayloe et al., Col. 3, lines 55-57). Tayloe et al. teach a network configured to determine a location of a subscriber unit. (Abstract). Column 4, lines 1-35 of Tayloe et al. teach that different networks exchange network maps for determining the location of a subscriber unit. There is no teaching or suggestion of the terminal device determining its location or using its location for analyzing any network access options.

None of the cited art, alone or in any combination, teaches or suggests all the limitations of claims 73-77. The Claims 73-77 are allowable over the cited art.

D. Claims 58-59 Are Allowable

Claim 58 requires the method of claim 56 to also include linking location information of the telecommunication terminal device to the recorded and saved quality of service information for the first network. Claim 58 also requires the telecommunications terminal to determine its location while the telecommunication terminal device is connected to the first network. Claim 59 depends from claim 58 and therefore also contains these limitations.

None of the cited art teaches or suggests the determining of a telecommunication terminal device location and linking of that location to saved quality of service information. Therefore, the combination of cited art cannot render these claims obvious.

The Examiner contends that Muller et al. teach determining a location and the Eneborg et al. disclose linking location information to saved quality of service information. To the contrary, as discussed above, Eneborg et al. do not teach or suggest any linking of location information. Further, Muller et al. fail to teach or suggest any determination of the location of a terminal device as required by claims 58-59. Muller et al. merely disclose the determination of a location of a central computer or other destination device. There is no teaching of a terminal determining its own location as required by claims 58-59.

E. Claims 60-61 Are Allowable

Claim 60 is an independent claim and defines a method that requires a telecommunication terminal device to communicate with at least one other telecommunication terminal device to obtain quality of service information for at least one second network for use in determining which network to select. Claim 61 depends from claim 60 and requires that the one

or more other telecommunication terminal device be within a predetermined distance of the telecommunication terminal device.

The Examiner contends that Eneborg et al. disclose a terminal device that communicates with another terminal device to obtain quality of service information at Column 8, lines 23-40 (Office Action, at 4). To the contrary, this portion of Eneborg et al. teach a terminal device that communicated with an access node, or network access device for receiving quality of service information pertaining to that access device. There is no teaching of any terminal device communicating with another terminal device to exchange quality of service information. For example, none of the end devices disclosed by Eneborg et al. share quality of service information with the other end devices.

None of the cited art teaches or suggests a telecommunication terminal device that obtains quality of service information for any network that is saved on another telecommunication terminal device for use in determining a network to select. Moreover, none of the cited art teaches or suggests that these other telecommunication terminal devices be within a predetermined distance of the telecommunication terminal device. Therefore, claims 60-61 are allowable over the cited art.

F. Claims 75-77 Are Allowable

Claims 75-77 depend directly or indirectly from claim 73 and also require a reputation information client module connected to a connection analysis module. The reputation information client module is configured to direct communications with other telecommunication terminal devices to obtain network access information that the other telecommunication terminal devices have stored. The connection analysis module is configured to access the network access

information that the other telecommunication terminal devices have stored obtained by the reputation information client module.

As discussed above with reference to claims 60 and 61, none of the cited art teaches or suggests a telecommunication terminal device that obtains quality of service information for any network that is saved on another telecommunication terminal. Nor does the cited art teach any connection analysis module configured to access such information. Claims 75-77 are allowable.

G. Granted European Patent No. EP 1 557 002
Shows The Pending Claims Are Allowable

The present application corresponds to granted European Patent No. EP 1 557 002. For the Examiner's reference, a copy of this patent was previously provided to the Examiner with the Amendment dated September 8, 2009. The European Patent Office has found the invention disclosed in the present application to warrant patent protection. This is an indicia of the non-obvious nature of the pending claims and shows that the claims should be allowed.

IV. CONCLUSION

For at least the above reasons, reconsideration and allowance of all pending claims are respectfully requested.

Respectfully submitted,

Dated: February 8, 2010

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